

REMARKS

Claims 1, 2, 15 and 16 are pending. Claims 1 and 15 are the only independent claims. Favorable reconsideration is respectfully requested.

Claims 1, 2, 15 and 16 were rejected under 35 U.S.C. § 103 over U.S. Patent 6,256,326 (Kudo) in view of U.S. Patent 6,256,292 (Ellis).

Applicant traverses and submits that: (1) the Office Action should not have been made final; and (2) once again, no prima facie case of obviousness has been set forth in the Office Action.

The Office Action Should Not Have Been Made Final

The Office Action was made final in spite of the fact that: (a) no amendments were made to the pending claims; and (b) significant changes were made to the portions of Kudo relied upon in the current Office Action that were not caused by amendments to the claims, these changes being a new ground of rejection to reject the same claims.

In the Office Action, the Examiner stated that applicant's arguments presented in the paper dated June 12, 2003 were not found to be persuasive. However, it is quite clear from the changes made to the rationale for the rejection that those arguments *were* found to

be persuasive. Specifically, the Examiner in the most recent Office Action relied upon different portions of Kudo for correspondence to the recited first, second and third layers.

In particular, in the previous Office Action, the recited first layer was said to correspond to PPI (terminal interfaces 40, 60 (and presumably their equivalent 45)), the recited second layer was said to correspond to element 44 (cross-connect) shown in Figure 11 (and its equivalents 41 and 61), and the recited third layer was said to correspond to RST (optical interface 42 (and presumably its exact counterpart 62, and their counterparts 43 and 46)). To summarize, according to the previous Office Action, the terminal interfaces correspond to the first layer, the cross-connects correspond to the second layer, and the optical interfaces correspond to the third layer.

However, as was pointed out in the Amendment dated June 12, 2003, in attempting to find correspondence between the elements of Kudo and the recited interrelationships between the layers, the Office Action inconsistently applied the above correspondence, thus failing to meet each and every feature of the claims. In the current Office Action, the Examiner now points to certain sections of Figure 6 as corresponding to the recited first, second and third layers, and no longer relies upon the structure relied upon in the previous Office Action. } }

This change in correspondence was necessitated by the *arguments* presented in the previous response (not by any claim amendments), the arguments having conclusively

demonstrated that the portions of Kudo relied upon in the previous Office Action were: (1) applied in a completely inconsistent manner; and (2) in no way taught the limitations of the independent claims.

Since the Examiner completely changed the portions of Kudo that were relied upon as teaching the recited layers, it is clear that the Applicant's arguments were in fact found to be persuasive. Thus, in effect, the previous rejection was withdrawn and a new ground of rejection set forth, a situation that necessitates issuance of a *non-final* Office Action.

In view of the above, Applicant requests that the finality of the Office Action be withdrawn. If the Examiner does not agree to withdrawal of the finality of the Action, she is requested to set forth in detail exactly how the rejection can be considered not to be a new ground of rejection.

The Current Rejection Does Not Set Forth A prima facie Case of Obviousness

Claim 1 is directed to a node comprising first, second, and third layers. A packet is mapped in the first layer. The first layer judges whether the packet is to be dropped at the node or to be hopped to a next node. The first layer transmits the packet to the third layer through the second layer when the first layer judges that the packet is to be dropped at the node.

The position is taken in the Office Action that Kudo teaches the features of claim 1 that the “first layer determines whether the packet is to be transmitted to another identified node via an established data link, . . . transmission to the next node or adjacent node . . . and transmitting data (packet) to said third layer through said second layer when [it is] determine[d] that the packet is to be forwarded to another node.”

In the first place, the quoted portion of the office action does not represent the actual language of claim 1. As shown above, claim 1 actually recites that the first layer judges whether the packet, mapped in the first layer, is to be dropped at the node or to be hopped to a next node. Further, the first layer transmits the packet to the third layer through the second layer when the first layer judges that the packet is to be dropped at the node.

To set forth a *prima facie* case of obviousness regarding this claim language would require that each and every claim limitation be found in the prior art, *in the recited interrelationships*. Each word, whether defining the layers and packet, or defining the cooperation between the layers and the packet, must be met by the prior art. It is clear from the Office Action that the actual and complete language of claim 1 was not considered. Rather, the Office Action provided an incomplete synopsis of claim 1 and then applied the prior art to that, which is, of course, improper.

Second, for the reasons developed below, the portions of Kudo identified in connection with the quoted statement above do not work together, and are not seen by

Applicant as teaching even what they are relied upon for, and certainly not what is actually claimed.

For example, Kudo at col. 6, lines 39-45, col. 8, lines 17-22, and col. 22, lines 17-26 are relied upon as teaching “said first layer determines whether the packet is to be transmitted to another identified node via an established data link.” Aside from the fact that this is not exactly what is claimed, the cited portions of Kudo do not even clearly teach what is quoted.

Specifically, col. 6, lines 39-45 states: “Subsequently, after a pointer (PTR) is extracted from the demultiplexed STM frame, and a path overhead (POH) is extracted therefrom, the cross connect 61 performs the following switching depending upon the POH. Moreover, in order to extract the POH, the optical interface 62 extracts an F2 byte forming the POH to establish a data link between the terminal apparatus 4 and the terminal apparatus 6.” However, there is no correlation given between the teachings of this portion of Kudo, which refers to Figure 9, and the three layers as defined in the current Office Action, which are *defined in relation to Figure 6*, and no longer in relation to Figure 9, as in the previous Office Action. With regard to the elements of Figure 9, the previous Office Action has already taken the position that *cross connect 61 corresponds to the second layer*, while *optical interface 62 corresponds to the third layer*.

Thus, this portion of Kudo: (1) is not expressed in the same terms as those used in Figure 6, which is the figure this Office Action has relied upon for correspondence to the three recited layers, and thus this portion of the specification cannot be used to support any teaching relating to the first layer as that layer is defined at page 1, line 13 of the Office Action; and (2) to the extent this portion can be understood to relate to layers as have been previously defined by the Examiner (in the prior Office action, which did refer to Figure 9 in finding correspondence between the recited layers and the structure shown in Kudo), it cannot be said to show that the first layer does *anything*, since that portion *does not refer to the first layer*, still less teach that the first layer judges whether the packet, mapped in the first layer, is to be dropped at the node or to be hopped to a next node, as is recited.

As to the next cited portion of the specification, col. 8, lines 17-22, that portion makes reference to Figure 11, not Figure 6, the figure with reference to which the current Office Action has defined the correspondence of Kudo to the recited first, second and third layers. This cited portion of Kudo states: "Further, the terminal interface 45 carries out mapping and demapping as in the terminal interface 60 described above, and is provided with IF boards having the number which corresponds to the number of installed exchanges (not shown) to be connected (two IF boards in FIG. 12: see reference numerals 45a, 45b). Moreover, the terminal interface 45 functions substantially as in the terminal interface 60 described above, and a detailed description thereof is omitted." This portion suffers from the same deficiency as the previous citation in that it makes reference to Figure 9, which is *not* the

one used in the Office Action to define the correspondence of Kudo with the recited layers.

Thus, the correspondence between the teachings of Kudo and the recited terms are not clearly set out in the rejection, as is required.

The cited portion at col. 22, lines 17-26 simply states that “the X byte is set to make a transmission to the next node EAST in the case of a transmission from an adjacent node EAST, or make a transmission to the next node WEST in the case of a transmission from a node WEST. Further, since each node is provided with optical interfaces (optical IF boards) for EAST and WEST, a transmission from EAST to WEST (loopback) is made by passing a pseudo-synchronization flag (pseudo-synchronization posting information) between the above two optical IF boards.” However, this portion bears no discernable relation to the above portions, *nor does it in any way teach the recited limitation.*

For at least these reasons, the Office Action has completely failed to set forth a reasoned argument as to why Kudo teaches the limitation that the first layer judges whether the packet, mapped in the first layer, is to be dropped at the node or to be hopped to a next node. For this reason alone, no *prima facie* case of obviousness has been set forth in the Office Action.

The portion of Kudo relied upon for the recitation that the first layer transmits the packet to the third layer through the second layer when the first layer judges that the packet is to be dropped at the node is equally deficient. Col. 8, lines 4-15 and 33-42 are cited in the

Office Action as providing this limitation. However, this portion of Kudo states that it is the cross connect 44 (previously *identified with the second layer*) that carries out switching of the signal demultiplexed in the optical interface 43 (previously *identified with the third layer*) to transmit the signal to the terminal interface 45 (previously *identified with the first layer*).

As far as can be determined by the Examiner's identification of the structure discussed in this portion and the recited layers, this portion was apparently relied upon as showing that the first layer transmits to the third layer through the second when the first layer judges that the packet is to be dropped at the node. As can be seen, however, this portion of Kudo shows nothing of the sort. In fact, as has been demonstrated, none of the citations teach or remotely suggest what that are relied upon for. For at least this additional reason, no *prima facie* case of obviousness has been set forth.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

In view of the above, each of the claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

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Respectfully submitted,

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